



Gene Loving, Chairman/CEO

January 12, 2017

Via Email: Ajit.Pai@FCC.gov
The Honorable Ajit Pai
Federal Communications Commission
Washington, DC 20554

Via Email: Michael.O'Rielly@FCC.gov
The Honorable Michael O'Rielly
Federal Communications Commission
Washington, DC 20554

Re: Ex Parte Letter
GN Docket No. 12-268

Dear Commissioners Pai and O'Rielly:

I want to raise some serious issues that are now known about the incentive spectrum auction. I realize the government consulted with the best minds in academia to craft this innovative auction process, but the results are flashing a warning sign—a huge warning sign—that the design that may have worked in the classroom does not work in the real world. Continuing on the current track no longer makes sense.

It seems likely one of you will be named Chairman of the FCC. Taking a cue from President-Elect Trump's efforts to reevaluate all government programs, I urge you to consider whether this auction, which was started under the previous administration, will likely end up as "failed" just as the new commission takes over, leaving the new administration holding the proverbial bag. It is likely the result will confirm some of the concerns you expressed when the auction procedures were initially adopted, including not raising any money for deficit reduction.

Recently, analysts have started to write about the possibility of the auction failing completely. Some have speculated that the reason that demand for spectrum by the wireless providers is so low is because of the timing, coming as it does on the heels of the AWS-3 auction. Others suggest that the problem is the announcement by Chairman Wheeler that the government is going to make available, at no cost, 1,500 megahertz of upper band spectrum, which, while not currently feasible for broadband, may be valuable in the future. The logic seems to be that a giveaway of this magnitude is worth waiting for. Both of those reasons may be contributing to the low level of current demand by wireless companies.

However, the primary cause of the problem, I believe, is a serious flaw in the design of the auction, which the commission described as an "innovative" approach. I'm certainly not an expert in auction theory, but the results of the forward auction are clear evidence of a flaw in the design, possibly due to the wireless bidders being told over and over that if they don't like the price, the auction will be rerun again and again and again. Perhaps rather than announce the clearing values, the commission should have kept that information confidential. Wireless bidders should have been told only how much spectrum would be made available, to see what was offered, while not knowing for sure that there would be second, third, fourth or more stages.

900 Laskin Road, Suite 200, Virginia Beach, VA 23451
Telephone: (757) 437-9800, Facsimile: (757) 437-0034

Calling the auction a success, claiming the market spoke, will not be a credible conclusion. We are already at the point where the auction is going to result in the capture of much less spectrum than anticipated, much less than is available for reallocation, much less than is needed for the nation's transition to broadband. The spectrum that is being repurposed is going to be transferred to the wireless industry at prices that will be judged to have been one of the government's greatest mistakes.

Average prices during the AWS-3 auction were \$2.53 per megahertz-pop. That was higher than anticipated, because it reflected reality, increased demand for spectrum. In contrast, though Stage 3 of the forward spectrum auction average bids by the wireless industry are \$0.84 per megahertz-pop, down almost two-thirds. Demand for broadband is not down two-thirds. It's up. The only reasonable conclusion that can be drawn is that the design of the auction is flawed. Within a year after it is done, there will likely be articles and academic studies published about how the wireless industry took the federal government for billions of dollars.

I suggest you consider jointly announcing a pause in the auction to reevaluate the process and the reasons for the anemic level of participation. It makes no sense to complete the auction at this level. In addition to the amount of spectrum cleared being inadequate for the future, going forward will result in repacking a large number of television stations, while not achieving the intended result. It's one thing to go through an additional three years of uncertainty for television broadcasters and \$1.75 billion of expense for a good cause that produces a meaningful net result, but that is not what is occurring. Although this was intended to be a one-time event, the wireless community will be back to ask for more in the near future.

I suggest the entire process of allocating spectrum needs to be re-thought. Instead of licensing spectrum for a one-time fee, perhaps we should consider a model similar to leasing, whereby the government and the taxpayers continue to benefit from the shift of our economy and infrastructure towards broadband communications. The wireless industry will vehemently disagree, as this auction design unduly benefits them over the public interest. This whole process is the result of the wireless industry selling the government on the need for spectrum, while at the same time bidding less and less. Everyone believes that the future of communications will require a lot of spectrum. That hasn't changed in the brief period since the AWS-3 auction, and it's not likely to change within our lifetimes. What has changed is an "innovative" auction design that has clearly failed.

Under new FCC management the current process should be temporarily halted and re-designed to ensure the future spectrum needs are truly met that reflect the reality of the market, not a flawed auction process. Perhaps we should move back to proven auction methods, rather than going forward with an embarrassing result. In line with the Trump administration business approach to running government, all 126 megahertz cleared in Stage 1 could be purchased by a specific purpose entity financed through the issue of bonds. That entity could then be charged with selling spectrum when demand merits the sale, meaning when prices are high enough so that the US Treasury could make a profit, or even better, leasing spectrum to the wireless industry at a monthly fee to create a long term income stream for the government and an ongoing return to U.S. taxpayers.

Other than my own personal bill for broadband service, which is several hundred dollars a month, I'm not an expert on the wireless industry or their economics. But I wonder whether they'd be willing to pay a monthly fee of \$.05 to \$.10 per megahertz-pop to lease spectrum,

which works out to an ongoing revenue stream to the government of \$.60 to \$1.20 per megahertz pop per year.

I realize the auction is being implemented under the provisions of a bill passed by Congress, and that taking this approach might require some sort of congressional action. However, those in Congress who pushed this bill, based in part on arguments from the wireless community about our country's growing demand for spectrum, don't want to be embarrassed either. Once Congress understands how this process is going and the likely fallout of continuing it, they should be receptive to a change. As events have unfolded, it is apparent almost none of Congress's expectations will be met, including reducing the deficit while being fair to all stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ajit Pai', with a stylized, cursive script.

cc: The Honorable Scott Taylor
Matthew Berry, Chief of Staff (Matthew.Berry@FCC.gov)
Brendan Carr, Legal Advisor (Brendan.Carr@FCC.gov)
Robin Colwell, Chief of Staff (Robin.Colwell@FCC.gov)
Erin McGrath, Legal Advisor (Erin.McGrath@FCC.gov)